

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In Re:)
)
Amendment of Section 73.202(b)) MM Docket 98-50
Table of FM Allotments) RM-9247
(Healdton, OK and Krum, TX))

To: Leslie K. Shapiro
Allocations Branch

COMMENTS OF PETITIONER

Petitioner AM & PM Broadcasters, LLC -- licensee of station KICM (FM), Healdton, OK -- respectfully submits these Comments in support of the proposal in NPRM, Docket No. 98-50, DA 98-659, released April 10, 1998.^{1/} The Petition for Rule Making sought (i) to amend the FM Table of Allotments to substitute channel 229C3 for channel 229C2 at Healdton, OK , (ii) to reallocate channel 229C3 from Healdton to Krum, TX and (iii) to modify the license for station KICM accordingly, so as to provide a "first local transmission service" for the rapidly growing city of Krum.

Background

1. The NPRM (at para. 4) correctly notes that the proposed reallocation of FM channels would provide Krum, TX, with a first local transmission service.

2. Although the NPRM raised an issue whether the proposed reallocation to Krum might result in depriving Healdton of its only existing local service (supra), any such concern is inappo-

^{1/} AM & PM Broadcasters, LLC, became the licensee of KICM (FM) in a closing held April 20, 1998. It adopts the Petition for Rule Making filed by the prior licensee and herein restates its intention to apply for and construct the new facility at Krum, TX.

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site here for two reasons. First, the licensee of channel 249C3 at Pauls Valley, OK, has proposed to reallocate its existing FM station to Healdton, OK.^{2/} Although the NPRM correctly notes that the Pauls Valley FM reallocation to Healdton is "speculative" at this time (id., at para. 3), the reallocation of channel 229C3 from Healdton to Krum certainly should not be denied solely on the basis "that Healdton would be without a local aural service" so long as the proposal to reallocate a substitute FM channel to Healdton remains pending before the FCC.^{3/}

3. Second, even if one ignores the proposal to reallocate the Pauls Valley FM channel to Healdton, the public interest strongly favors the reallocation of channel 229C3 from Healdton to Krum. As demonstrated below, Krum is a rapidly growing and developing city whose substantial need for a "first local service" strongly outweighs the modest and shrinking interests of Healdton.

DISCUSSION

I. THE POPULATION TRENDS FAVOR REALLOCATION TO KRUM

4. The NPRM (at para. 3) states that, based on the "1990 Census" data, Healdton is a larger city than Krum. As the FCC is keenly aware, however, population superiority -- at a frozen

^{2/} While the Pauls Valley Petition for Rule Making was returned by the Chief, Allocations Branch on March 26, 1998, as allegedly unacceptable for filing, that Petitioner filed for Reconsideration on April 13, 1998 (on the basis that the presumption underlying the FCC's return of the Petition for Rule Making was based on erroneous facts regarding the present operation of station KLAK (FM), Durant, OK).

^{3/} At a minimum, no final action in this Rule Making docket should be made until the proposal to reallocate the Pauls Valley FM channel to Healdton is decided by the FCC.

point in time -- does not ipso facto establish any community's preference, over another, for an FM allotment.

5. Moreover, the population trends in this case clearly establish that Krum's population will soon surpass -- if it has not already -- that of Healdton, which has steadily been LOSING population for the past decade. ^{1/}

II. THE NEEDS OF KRUM FAR OUTWEIGH THOSE OF HEALDTON

6. Furthermore, the needs of Healdton are both modest and shrinking. During recent years, Healdton has suffered from the decline of the area's major employer -- the oil industry. See Exhibit A. Within the last few years, companies such as Mobil Oil, Haliburton and Texaco Transportation have totally moved out. Id. The loss of these major employers has, in turn, led to the shutdown of numerous area businesses (including a department store, lumberyard, restaurants and retail establishments). Id.

7. In contrast, the problems, needs and interests of Krum are INCREASING across the board. Consider the following statistics regarding the city of Krum (see Exhibit A):

-- school district's "trade area" has increased 600% since 1989 (from 900 in 1989 to 4970)(projected to be 7,000 by 2000)

^{1/} Healdton's population dropped almost 25% in the past decade, from 3,769 in 1980 to 2,872 in 1990. See Exhibit A. In the same period, Krum's population has grown nearly 60% -- from only 917 in 1980 to 1542 in 1990. Id. At this rate, by January 1999, Krum will overtake Healdton in population, approximately 2318 to 2207. Id. Moreover, the population of Krum's Denton County grew from 143,126 in 1980 to 273,525 in 1990 (Census) -- an increase of over 90% -- while the population of Healdton's Carter County decreased from 43,610 to 42,919 during the decade. Id.

-- 50% increase in Krum police force this year over year ago
-- city library has doubled in size since 1984
-- intermediate school has been expanded twice this decade
-- two day-care centers are totally full; third planned
-- new 12-store shopping center being constructed
-- number of postal boxes in Krum's zip code (76249) has almost doubled in three years: 440 in 1995 to 812 now

-- local water meters have nearly doubled in the past three years: from 443 in 1993 to 871 now

-- increase in Krum churches from 3 in 1995 to 5 now

-- Krum also has a fire department, water system, city hall, 4 public schools on three campuses, central post office, and dozens of local businesses. The bank and the town hardware store have been in continuous operation for over 80 years. The city has an active Chamber of Commerce (Kim Ames, Pres.) and, each December, Krum becomes "North Pole, Texas," home of the annual Lighted Christmas Parade. The city has a mayor and five councilmen. A future city park is part of Krum's "Master Plan."

7. In sum, the rapidly growing city of Krum -- with expanding housing, businesses, schools, and traffic -- has substantial need for a local broadcast station. This is precisely the type of community for which, pursuant to Section 307(b), the FCC is required to provide local radio service.

III. THE "LOSS" AREA IS ALREADY WELL SERVED

8. Even excluding the proposed reallocation of the Pauls Valley FM channel to Healdton, the "loss" area is already "well served" both daytime and nighttime.^{5/} Indeed, the community of Healdton itself would continue to receive daytime and nighttime service from at least two (2) other FM stations that are licensed to nearby towns in the same county (Carter County). See Exhibits C, D and E.

^{5/} For example, KICM's entire "loss area" would continue to receive daytime service from at least five aural services. See Exhibit B. Likewise, all but 200 square kilometers of KICM's 8,487-square-kilometer "loss area" would continue to receive nighttime service from at least five aural services. See Exhibit C. Moreover, that 200-square-kilometer area, which lies in the northeast quadrant of the "loss area," constitutes only 2% of the entire loss area and is sparsely populated. Id.

IV. THE CHANGE OF COMMUNITY WOULD RESULT IN A MORE EFFICIENT USE OF THE SPECTRUM

9. The proposed change of community would result in a more efficient use of the spectrum. Station KICM (FM) currently provides service to 92,208 persons within its 60 dBu service contour. See Exhibit F. The proposed operation at Krum would provide service to approximately 165,673 persons within its 60 dBu contour. Id. The proposed change of community would result in service to a 79% greater population. The proposal would serve the public interest by providing for a more efficient use of the broadcast spectrum. See 47 USC 307(b).

CONCLUSION

The public interest would be greatly served by the reallocation of channel 229C3 from Healdton to Krum and the modification of the license of station KICM (FM) to specify operation on the new channel at Krum. If allocated, the licensee will file an application to construct the new facility and, after the CP is granted, will build and operate the new facility at Krum.

Respectfully submitted,

Robert Lewis Thompson
TAYLOR THIEMANN & AITKEN, L.C.
908 King Street, Suite 300
Alexandria, VA 22314
(703) 836-9400

Counsel for Petitioner

May 29, 1998

cc: Wright & Wright, Inc. (KGOK-FM)
KICM-FM (Local Public File)


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Robert Lewis Thompson
TAYLOR THIEMANN & AITKEN, L.C.
908 King Street, Suite 300
Alexandria, VA 22314
(703) 836-9400

Counsel for Petitioner

June 1, 1998

cc: Wright & Wright, Inc. (KGOK-FM)
KICM-FM (Local Public File)

Affidavit of Richard Witkovski

Richard Witkovski does state under penalty of perjury that:

1. My name is Richard Witkovski and I am president of AM & PM Broadcasters, LLC, licensee of station KICM (FM).

2. In support of the Petition for Rule Making, I conducted substantial research regarding the needs, interests and problems of both Krum, TX and Healdton, OK.

3. During May 1998, I interviewed residents of KICM's current service area (Healdton). I also visited Krum and met with officials of the Krum Chamber of Commerce (Kim Ames, president), assistant city manager Wendy Soule, school board member Conrad Shifflett, postmaster Eddie Sampler, president of Farmers & Merchants State Bank, Vaughn Andrus, and Krum police officer Fletcher. I obtained statistics and demographic information from the Krum Independent School District, the City of Krum, and the Krum Chamber of Commerce. I also obtained 1980/1990 Census information for Krum, Healdton and their respective counties. Among the information that I obtained is:

-- Healdton's population dropped almost 25% in the past decade, from 3,769 in 1980 to 2,872 in 1990. In the same period, Krum's population has grown nearly 60% -- from only 917 in 1980 to 1542 in 1990. Moreover, the population of Krum's Denton County grew from 143,126 in 1980 to 273,525 in 1990 (Census) -- an increase of over 90% -- while the population of Healdton's Carter County decreased from 43,610 to 42,919 during the decade.

-- Krum school district's "trade area" increased 600% since 1989 (from 900 in 1989 to 4970)(projected to be 7,000 by 2000); intermediate school has been expanded twice this decade;

-- 50% increase in Krum police force this year over year ago

-- Krum city library has doubled in size since 1984

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-- new 12-store Krum shopping center being constructed

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-- increase in Krum churches from 3 in 1995 to 5 now

-- Krum also has a fire department, water system, city hall, 4 public schools on three campuses, central post office, and dozens of local businesses. The bank and the town hardware store have

been in continuous operation for over 80 years. The city has an active Chamber of Commerce (Kim Ames, Pres.) and, each December, Krum becomes "North Pole, Texas," home of the annual Lighted Christmas Parade. The city has a mayor and five councilmen. A future city park is part of Krum's "Master Plan."

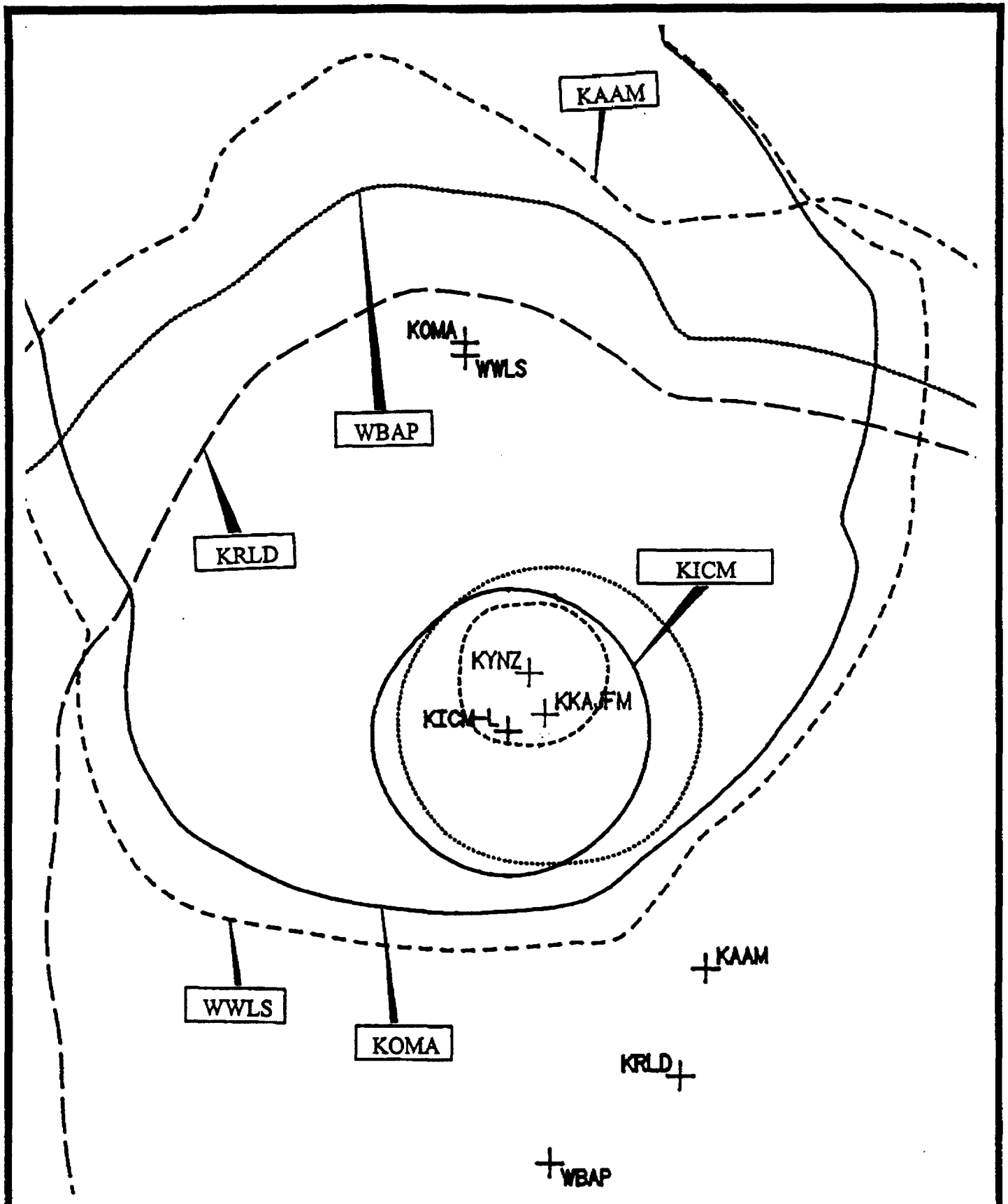
-- Healdton and surrounding communities have witnessed the downsizing of the oil industry during the last few years, including the total withdrawal from the area of such companies as Mobil Oil, Haliburton, and Texaco Transportation

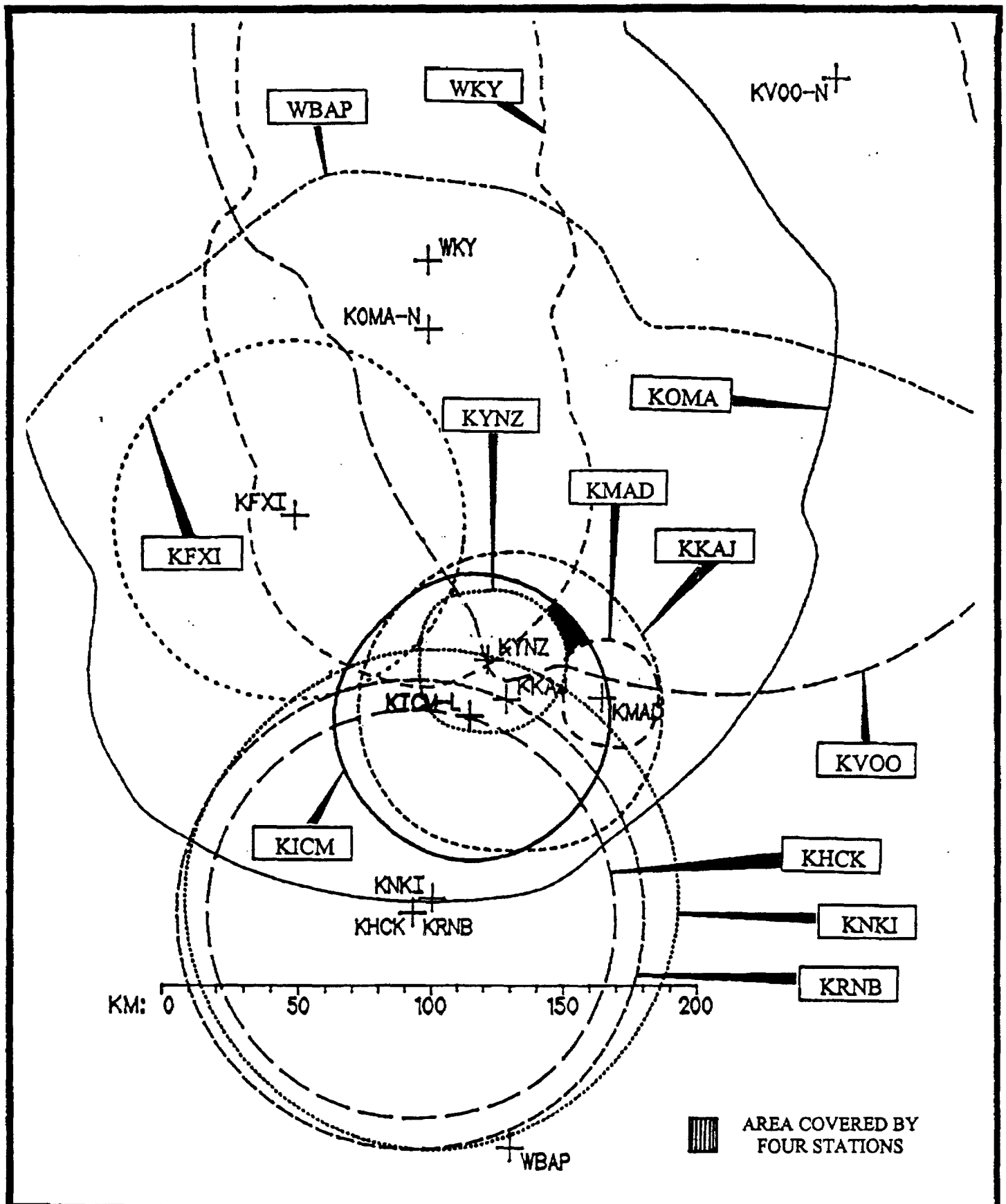
-- Healdton's loss of major employers in the oil industry has, in turn, led to numerous business closings in recent years (June's Jewelry, Chan's Restaurant, Holly's Dress Shop, Jim Bill's Cafe, Mashore's Department Store, J & H Movie House, Charlotte's Web, Apex Tools and Tri-City Lumber).

VERIFICATION

I, Richard Witkovski, verify that the information in the foregoing Affidavit is true and complete to the best of my knowledge and belief. Executed on May 28, 1998.


Richard Witkovski





AREA COVERED BY
FOUR STATIONS

RadioSoft

72 Point Display

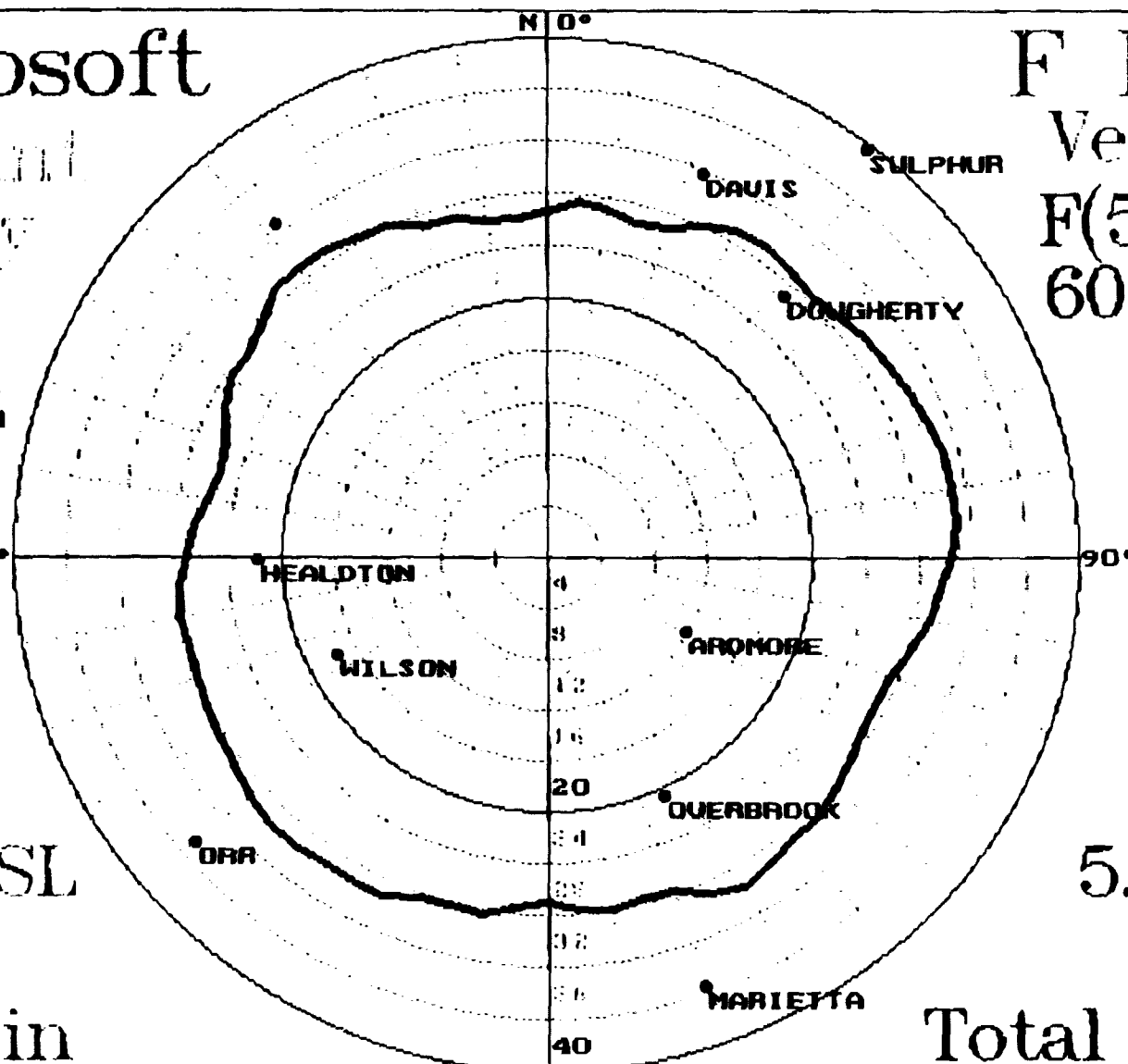
Left button:
Distance and
Lat - Lon;
ESC=Exit
C=Cities
F=Field
S=County
6=Roads
7=Points
8=Water
9=Radrau

C/R-

374.0

M. AMSL

Scale in
Kilometers



F M R
Ver 1.2
F(50,50)
60 dBu

ERP
(kW)

5.500

Total area:
2512.9 km²

KYNZ

RadioSoft

72 Point
Display

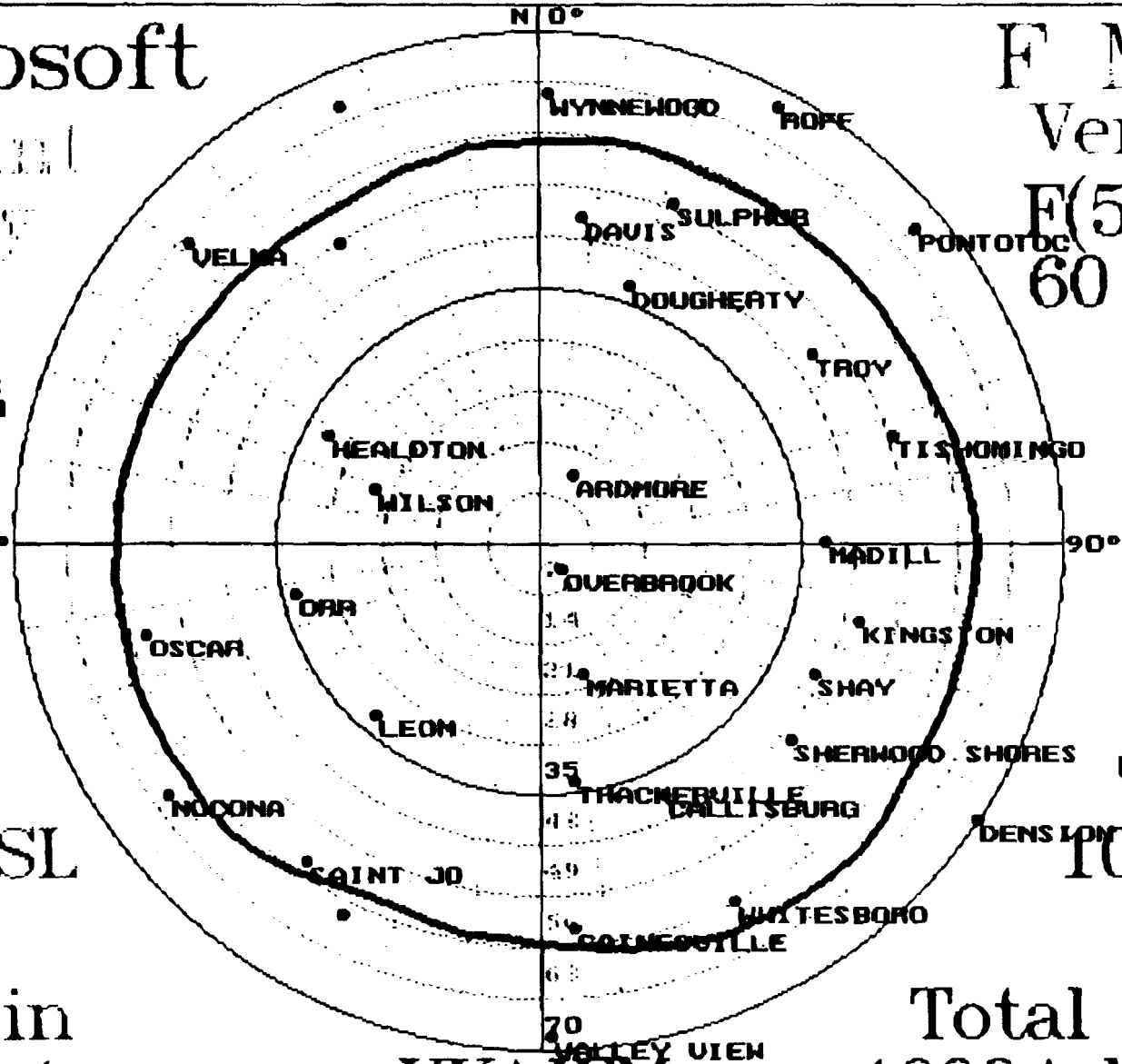
Left button:
Distance and
Lat - Lon;
ESC=Exit
C=Cities
F=Field
S=County
R=Roads
W=Water
Z=Redraw

C/R-

389.0

M. AMSL

Scale in
Kilometers



F M R

Ver 1.2

F(50,50)

60 dBu

ERP
(kW)

100.0

Total area:
10004 km²

KKAJFM

TECHNICAL NARRATIVE

This technical showing is prepared to support a request to change city of license of KICM-FM from Healdton, Oklahoma to Krum, Texas.

SERVICE LOST: The licensed facility serves 92,208 persons in 8,487 square kilometers within the 60 dB μ that will be lost because of the site move.

SERVICE GAIN: This proposal will serve 165,673 persons within 4,727 square kilometers. There are no common areas served by the present and proposed operations.

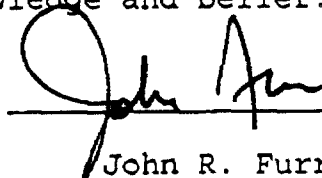
The new area of KICM is served full-time by 5 or more stations. Some of these include:

WBAP, 820 kHz, Fort Worth, TX
KRLD, 1080 kHz, Dallas, TX
KDGE, Channel 233, Gainesville, TX
KHCK, Channel 256, Denton, TX
KPLX, Channel 258, Fort Worth, TX

The population counts were made in a computerized study of population data supplied by the U.S. Census Bureau in Public Law 94-171 was used. The program includes persons whose centroid coordinates are within the respective contour but outside the second contour. The contour distances were smoothed to each degree of azimuth.

My qualifications are a matter of record with the FCC. The above information and attached exhibits are true and correct according to my knowledge and belief.

May 29, 1998


John R. Furr